



**Billing Codes 4333–15–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[Docket No. FWS–HQ–ES–2015–0169; 4500030113]**

**Draft Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a draft methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the Endangered Species Act. This draft methodology is intended to allow us to address outstanding workload strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our upcoming workload.

**DATES:** We will accept comments from all interested parties until [INSERT DATE 30 DAYS

AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Search box, enter the FWS–HQ–ES–2015–0169, which is the docket number for this draft policy. Then click on the Search button. You may enter a comment by clicking on “Comment Now!”

Please ensure that you have found the correct document before submitting your comment.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0169, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Request for Information** section, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703/358–2171; facsimile 703/358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## **Background**

Under the Endangered Species Act, as amended (Act; 16 U.S.C. 1531 *et seq.*), the public can petition the Service to list, delist, or reclassify a species as an endangered species or a threatened species. The Act sets forth specific timeframes in which to complete initial findings on petitions: the Service has, to the maximum extent practicable, 90 days from receiving a petition to make a finding on whether the petition presents substantial information indicating that the petitioned action may be warranted; and subsequently 12 months from receiving a petition for which the Service has made a positive initial finding to make a finding on whether the petitioned action is warranted. However, these statutory deadlines have often proven not to be achievable given the workload in the listing program and the available resources.

Recently, as a result of petitions to list a large number of species under the Act, our workload includes more than 500 unresolved status reviews and accompanying 12-month findings on those petitions to complete. At the same time, our resources to complete these findings are limited. Over the last several years, we have streamlined, and continue to find efficiencies in, our procedures for evaluating petitions and conducting listing actions, but these efforts are not sufficient to keep up with the demands of our workload. This draft methodology is intended to allow us to address the outstanding workload of status reviews and accompanying 12-month findings strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our upcoming workload.

To balance and manage this existing and anticipated future status review and accompanying 12-month finding workload in the most efficient manner, we have developed a draft methodology to help us use our resources wisely by working on the highest-priority status reviews and accompanying 12-month petition findings first. The draft methodology consists of identifying five prioritization categories for these actions, determining where (into which category) each action belongs, and using that information to establish the order in which we plan to complete status reviews and accompanying 12-month findings on petitions to list species under the Act. This prioritization of petition findings will inform a multi-year National Listing Workplan for completing all types of actions in the listing program workload—including not only status reviews and accompanying 12-month findings, but also status reviews initiated by the Service, proposed and final listing determinations, and proposed and final critical habitat designations. We intend to make the National Listing Workplan publically available on our website ([www.fws.gov/endangered/](http://www.fws.gov/endangered/)) and periodically update it as circumstances warrant. This draft methodology for prioritizing petitions to list species does not apply to actions to downlist a species from an endangered species to a threatened species or to delist a species. Further, this methodology does not replace our 1983 Endangered and Threatened Species Listing and Recovery Priority Guidelines (September 21, 1983; 48 FR 43098), which applies to species that have already been determined to warrant a listing proposal; rather, it complements it and can be used in conjunction with it. As with the 1983 guidelines, this draft methodology must be viewed as a guide and should not be looked upon as an inflexible framework for determining resource allocations (See 48 FR 43098). It is not intended to be binding. The draft methodology to be used in prioritizing actions and identified herein incorporates numerous objectives—including

acting on the species that are most in need of, and that would most benefit from, listing under the Act first, and maximizing the efficiency of the listing program.

We plan to evaluate unresolved status reviews and accompanying 12-month findings for upcoming listing actions and prioritize them using the prioritization categories and additional considerations identified in this draft methodology to assign each action to one of five priority categories, or “bins,” as described below. In prioritizing status reviews and accompanying 12-month findings, we will consider information from the 90-day finding, any petitions, and any other information in our files. We recognize that we may not always have in our files the information necessary to assign an action to the correct bin, so we plan to also work with State fish and wildlife agencies, Native American Tribes, and other appropriate conservation partners who have management responsibility for these species or relevant scientific data to obtain the information necessary to allow us to accurately prioritize specific actions.

This priority system will assist us in compiling outstanding workload into a multi-year National Listing Workplan designed to address the species with the highest need first. It is our intention that the National Listing Workplan balance addressing the large backlog of status reviews and accompanying 12-month findings with making progress on other listing actions, such as making final listing determinations for candidate species and designating critical habitat. While this draft methodology was developed primarily to prioritize the outstanding status reviews and accompanying 12-month petition findings, the considerations raised in our prioritization categories may also be useful in prioritizing other actions in the listing program as we develop the National Listing Workplan each year. Prior to the start of each fiscal year, we

will update the National Listing Workplan as new information is obtained. We will share the National Listing Workplan with other Federal agencies, State fish and wildlife agencies, Native American Tribes, and other stakeholders and the public at large through posting on our website ([www.fws.gov/endangered/](http://www.fws.gov/endangered/)).

## **Priority Bins**

Below we describe the categories we have identified for prioritizing listing actions and the information that factors into placing specific actions into the appropriate priority bin. Note that an action need not meet every facet of a particular bin in order to be placed in that bin. If an action meets the conditions for more than one bin, the Service will seek to prioritize that action by taking into consideration any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of this draft methodology—including protecting the species that are most in need of, and that would benefit most from, listing under the Act first, and maximizing the efficiency of the listing program.

**(1) Highest Priority—Critically Imperiled:** Highest priority will be given to a species experiencing severe threat levels across a majority of its range, resulting in severe population-level impacts. Species that are critically imperiled and need immediate listing action in order to prevent extinction will be given highest priority.

**(2) Strong Data Already Available on Status:** Species for which we currently have strong information concerning the species' status will receive next highest priority.

We acknowledge that the Act requires that we base our decisions on the best available information at the time we make a determination, and we will continue to adhere to that requirement. Our experience implementing the Act has shown us that high-quality scientific information leads to stronger, more defensible decisions that have increased longevity. Therefore, we will generally place species for which we have particularly strong scientific data supporting a clear decision on status—either a decision that the species warrants listing or does not warrant listing—at a higher priority than species in Bins 3, 4, and 5, discussed below.

**(3) New Science Underway to Inform Key Uncertainties:** As stated previously, a higher quality of scientific information leads to better decision-making, which focuses our resources on providing protections associated with endangered and threatened species listing on species most in need. Scientific uncertainty regarding a species' status is often encountered in listing decisions. For circumstances when that uncertainty can be resolved within a reasonable timeframe because emerging science (e.g., taxonomy, genetics, threats) is underway to answer key questions that may influence the listing determination, those species will be prioritized for action next after those with existing strong information bases. This bin is appropriate when the emerging science or study is already underway, or a report is expected soon, or the data exist, but they need to be compiled and analyzed. Placing a species in this bin does not put off working on the listing action; it just prioritizes work on species in Bins 1 and 2 for completion first. Moreover, species do not remain in this bin indefinitely; a species for which ongoing research is not expected to produce results

in the near future would not be placed in this bin, and any species that is placed in this bin will be moved to another bin after the research results become available. With the new, emerging information, a more informed decision could be made (e.g., a species' status could be determined fairly readily through surveys or other research).

**(4) Conservation Opportunities in Development or Underway:** Where efforts to conserve species are organized, underway, and likely to address the threats to the species, we will consider these species as our fourth highest priority. In order for a species to be appropriately placed in this bin, conservation agreements and commitments should be completed in time for consideration in the status review and accompanying 12-month finding and in an amount of time that provides landowners or other entities adequate opportunity to enroll prior to any listing decision. Placing a species in this bin does not put off working on the listing action; it just prioritizes work on species in Bins 1, 2, and 3 for completion first.

**(5) Limited Data Currently Available:** Species for which we know almost nothing about its threats or status will be given fifth highest priority. If we do not have much information about a species without conducting research or further analysis, the species would be suitably placed in this bin. Placing a species in this bin does not put off working on the listing action; it just prioritizes work on species in Bins 1, 2, 3, and 4 for completion first.



According to the standard under the Act, we need to make listing decisions based on the best available scientific and commercial data. Because the best available data for species in this bin may be very limited, even if the Service conducts further research, we will place a higher priority on work for those species for which we have more and better data already available.

### **Additional Considerations**

The following considerations will also be used to inform implementation of the prioritization process, development of the National Listing Workplan, and any necessary internal ranking within each bin (i.e., as tie-breakers within a bin):

- The level of complexity surrounding the status review and accompanying 12-month finding, such as the degree of controversy, biological complexity, or whether the status review and accompanying 12-month finding covers multiple species or spans multiple regions of the Service.
- The extent to which the protections of the Act would be able to improve conditions for that species and its habitat or also provide benefits to many other species. For example, a species primarily under threat due to sea level rise from the effects of climate change is unlikely to have its condition much improved by the protections of the Act. By contrast, a species primarily under threat due to habitat destruction from grazing practices on public lands would more directly benefit from the protections of the Act.

- Whether there are opportunities to maximize efficiency by batching multiple species for the purpose of status reviews, petition findings, or listing determinations. For example, actions could be batched by taxon, by species with like threats, by similar geographic location, or other similar circumstances. Batching may result in lower-priority actions that are tied to higher-priority actions being completed earlier than they would otherwise.
- Whether there are any special circumstances whereby an action should be bumped up (or down) in priority when internally ranking actions within a bin or developing the National Listing Workplan. One limitation that might result in divergence from priority order is when the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas.

### **Request for Information**

Section 4(h) of the ESA requires that, when the Secretary establishes guidelines to insure that the purposes of Section 4 are achieved efficiently and effectively, the Secretary provide to the public notice of, and opportunity to submit written comments on, those guidelines. In addition, we intend that a final methodology for prioritizing status reviews and accompanying 12-month findings for listing will consider information and recommendations from all interested parties. We therefore solicit comments, information, and recommendations from governmental

agencies, Native American Tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. All comments and materials we receive by the date listed above in **DATES** will be considered prior to the adoption of a final methodology.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

We seek comments and recommendations in particular on:

- (1) Whether this draft methodology sets out clearly defined conditions for the prioritization bins. If not, please provide detailed comments so that we can clarify our methodology.
- (2) Whether there may be other factors or considerations that should be incorporated into our methodology.
- (3) Whether our draft methodology makes logical sense and will result in an appropriate use of our limited resources.

### **Determinations Under Other Authorities**

As mentioned above, we intend to use this methodology to prioritize work on status reviews and accompanying 12-month findings and to assist with prioritizing actions in order to

develop the National Listing Workplan for each fiscal year. Below we make determinations provided for under several Executive Orders and statutes that may apply where a Federal action is not a binding rule or regulation.

### **National Environmental Policy Act (NEPA)**

We are analyzing this draft methodology in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10-46.450), and the Department of the Interior Manual (516 DM 1-6 and 8). We invite the public to comment on the extent to which this draft methodology may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this methodology.

### **Paperwork Reduction Act of 1995**

This draft methodology does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This draft methodology will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### **Government-to-Government Relationship with Tribes**

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments,” and the Department of the Interior Manual at 512 DM 2, and the Department of Commerce *American Indian and Alaska Native Policy* (March 30, 1995), we have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this draft methodology. Our intent with this draft methodology is to provide transparency to Tribes and other stakeholders in the prioritization of our upcoming workload. We will continue to work with Tribes as we finalize this draft methodology and obtain the information necessary to accurately bin specific actions and develop our National Listing Workplan.

## **Authors**

The primary authors of this draft policy are the staff members of the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041.

## **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 6, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

**~~[Draft Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings  
on Petitions for Listing Under the Endangered Species Act]~~**

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